

## Agricultural Marketing Service, USDA

## § 900.58

### § 900.54 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

### § 900.55 Judges.

(a) *Assignment.* No judge who has any pecuniary interest in the outcome of the proceeding, or who has participated in any investigation preceding the institution of the proceeding, shall serve as judge in such proceeding.

(b) *Conduct.* The judge shall conduct the proceeding in a fair and impartial manner and shall not discuss ex parte the merits of the proceeding with any person who is or who has been connected in any manner with the proceeding in an advocative or investigative capacity.

(c) *Powers of judges.* Subject to review by the Secretary, as provided elsewhere in this subpart, the judge shall have power to:

- (1) Rule upon motions and requests;
- (2) Adjourn the hearing from time to time, and change the time and place of hearing;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Issue subpoenas, under the facsimile signature of the Secretary, requiring the attendance and testimony of witnesses and the production of books, records, contracts, papers, and other documentary evidence;
- (5) Examine witnesses and receive evidence;
- (6) Take or order, under the facsimile signature of the Secretary, the taking of depositions;
- (7) Admit or exclude evidence;
- (8) Hear oral argument on facts or law;
- (9) Consolidate hearings upon two or more petitions pertaining to the same order;
- (10) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

(d) *Who may act in absence of judge.* In case of the absence of the judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of

the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(e) *Disqualification of judge.* The judge may at any time withdraw as judge in a proceeding if he deems himself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as he may deem appropriate in the circumstances.

### § 900.56 Consolidated hearings.

At the discretion of the judge, hearings upon two or more petitions pertaining to the same order may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record.

### § 900.57 Intervention.

Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

### § 900.58 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the judge, at any time prior to the commencement of or during the course of the hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (c) the limitation of the number of expert or other witnesses; and (d) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written stipulations or agreements made by

the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the judge shall submit a written summary for the record if any action is taken.

**§ 900.59 Motions and requests.**

(a) *General.* (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of an oral hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) The judge is authorized to rule upon all motions and requests filed or made prior to the transmittal by the hearing clerk to the Secretary of the record as provided in this subpart. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification of motions.* The submission or certification of any motion, request, objection, or other question to the Secretary, as provided in this subpart, shall be in the discretion of the judge.

[25 FR 5907, June 28, 1960, as amended at 38 FR 29798, Oct. 29, 1973]

**§ 900.60 Oral hearings before judge.**

(a) *Time and place.* The judge shall set a time and place for hearing and shall file with the hearing clerk a notice stating the time and place of hearing. If any change in the time or place of hearing becomes necessary, it shall be made by the judge, who, in such event, shall file with the hearing clerk a notice of the change. Such notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript.

(b) *Appearances—(1) Representation.* In any proceeding under the act, the parties may appear in person or by counsel or other representative. The Department, if represented by counsel, shall be represented by an attorney assigned by the General Counsel of the Department,

and such attorney shall present or supervise the presentation of the position of the Department.

(2) *Debarment of counsel or representative.* Whenever, while a proceeding is pending before him, the judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided,* That the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative. In case the judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If the petitioner, after being duly notified, fails to appear at the hearing, he shall be deemed to have authorized the dismissal of the proceeding, without further procedure, and with or without prejudice as the judge may determine. In the event that the petitioner appears at the hearing and no representative of the Department appears, the judge shall proceed ex parte to hear the evidence of the petitioner. *Provided,* That failure on the part of such representative of the Department to appear at a hearing shall not be deemed to be waiver of the Department's right to file suggested findings of fact, conclusions and order; to